

**Draft Minutes**  
**Delta Protection Commission Meeting**  
**Thursday, May 24, 2001**

**1. Call to Order.**

The meeting was called to order at 6:30 p.m. by Chairman Patrick N. McCarty. Commissioners present were: Brean, Calone, Coglianese, Curry, Curtis, Ferguson, Gleason, Sanders, Shaffer, Van Loben Sels, and Wilson. Absent were: Bedford, Cabaldon, Glover, Macaulay, McGowan, Nottoli, and Thomson.

**2. Public Comment Period for Items not on the Agenda.**

There were no public comments.

**3. Minutes of Last Meeting.**

On a motion by Commissioner Gleason and a second by Commissioner Brean, the draft minutes were approved unanimously by voice vote; Commissioner Calone abstained.

**4. Chairman's Report.**

Chairman McCarty introduced and welcomed Karen Morais, new staff member to the Delta Protection Commission (DPC), noting her past government experiences and years of Delta boating. He announced that the Commission's regulations were approved by the Office of Administrative Law (OAL) and noted that a copy of the regulations and approval letter were in the Commissioners' packets, as well as being posted on the website. A few minor changes were made at the request of OAL to clarify the regulations. These will be included in the Commission's Plan when it is printed. He and the Commissioners congratulated Margit Aramburu, DPC Executive Director, and Dan Siegel, Attorney General's Office. The Chairman noted a CALFED Subcommittee Meeting was scheduled for Thursday, July 5, from 2 to 4 p.m. at the Jean Harvie Community Center to review and comment on CALFED's Draft Implementation Plan for the Delta. The Plan will be discussed before the full Commission at the July 26, 2001 meeting.

**5. Commissioner Comments/Announcements.**

Commissioner Shaffer inquired if CALFED's Draft Implementation Report would be ready for the July 5 CALFED Subcommittee meeting. Margit will confirm with Dennis Majors, CALFED, but assures the Commissioners she will get the report to them prior to the meeting.

Commissioner Van Loben Sels asked if the DPC regulations or Plan included language that would address the situation in Reclamation District 744 where the landowners are

dumping truck loads of fill dirt on ranch. He approached Sacramento County and was informed that they don't have any regulations, requirements, or any permits that would be necessary before an individual could dump on an 'island'. He is requesting DPC staff to advise if there is any inspection process that would ensure that the dirt would be checked for pollutants/pests that could be picked up at the pumps, since this is dirt coming from outside the legal Delta to inside the Legal Delta. Ms Aramburu will investigate and report back to DPC.

Commissioner Curry said former Commissioner Donald Murphy is now Director of Parks and Recreation for the City of Sacramento.

## **6. Attorney General's Report.**

Dan Siegel, Attorney General's Office, followed up on an issue from the March meeting regarding the Clean Water Act and the requirements for obtaining a permit for spraying under the Act. The 9<sup>th</sup> Circuit Court of Appeals decision upheld a requirement for spraying into an irrigation canal, which was connected with streams and connected with navigable waters. In general, a permit is required under the Act for adding a pollutant (i.e., herbicides, pesticides, agricultural waste) to a navigable water from any point source.

The Tulare Lake case decision by the Court of Federal Claims held on April 30 that the federal government has physically taken the right to use water from San Joaquin water users when it required them to preserve water for endangered species under the Endangered Species Act (ESA) during the early 1990's, specifically to protect the Delta smelt and winter run Chinook Salmon. He said it is the first time ever that a court has held that the federal government is required to pay compensation for preventing a use under the ESA.

Commissioner Shaffer asked, re: the Clean water Act, is there any update on the State's response, or any difference between public agencies and non-public agencies? Mr. Siegel stated this issue was within the jurisdiction of the Regional Water Quality Control Board. Commissioner Shaffer added there was a State Board effort to develop an abatement order and a NPDES permit, but it would only apply to public agencies.

## **7. Executive Director's Report.**

Ms. Aramburu reviewed the material in the mailing packet and that handouts, including additional agriculture information and a San Joaquin County map, copy of the CALFED Annual Report, nominations for the Recreation Citizens Advisory Committee, and Notice of Availability of Background Reports reprinted and on the website.

Pending Projects Memo – Commissioner Van Loben Sels requested the DPC Staff start attaching to the Memo a cumulative tally of the conversion of ag land. The Memo currently shows projects that have been implemented on the ground rather than just approved. Ms. Aramburu requested feedback from the Commissioners if they desire

more information on the Pending Projects Memo, i.e., projects that have been approved but not constructed.

Legislative Subcommittee - Commissioner Gleason and Ms Morais are testing a new legislative tracking system to monitor the Commission's legislative bills. A report on those bills that are advancing through the process will be generated for the July DPC meeting.

Highway 160 – Ms. Aramburu and Ms Morais attended a May 24, meeting with CALTRANS, the Reclamation Board (RB), and Reclamation Districts (RDs). CALTRANS is proposing to proceed with the guardrail installation project (from the Paintersville Bridge to Sherman Island in Sacramento County), the RB Staff will take responsibility of developing an MOU with the RDs which will allow reimbursement of the Districts for additional costs associated with normal levee maintenance which may result from installation of the guardrails. CALTRANS will send a written notice to all the landowners of the upcoming project. Staff will take the lead in bringing together interested parties to try to develop a planning process to look at larger safety issues on Highway 160.

Commissioner Wilson asked if there was any feedback from the City of Elk Grove regarding their sphere of influence expanding into the Delta Primary Zone. Ms. Aramburu responded that she had met with the City Manager of Elk Grove and they are in the process of hiring a Planning Director. She will be meeting with the new Director when he/she gets on board and report back.

Commissioner Ferguson asked if there was any information on pollutants, if any, in the Delta dredging data collected under the Delta Dredge Reuse Strategy. Ms. Aramburu responded that she recently attended a workshop at Department of Fish and Game (DFG) and that they had completed a database which includes all the data collected for dredging projects since 1986, however, there's insufficient data in the Delta geographically. DFG is starting to draft the chapters for the report and it is projected for completion this fall. It is a CALFED-funded directed action that the Regional Water Quality Control Board and DFG are carrying out to look at ways to reuse materials dredged from the Delta channels in the Delta, basically for levee maintenance. Ms Aramburu will present an update at the July meeting.

Ms Aramburu reviewed the meetings staff has attended since the last DPC Meeting.

## **8. Update on CALFED Actions and Projects in the Delta.**

Dennis Majors, CALFED, said the Delta Implementation Strategy will be reviewed at the July CALFED Subcommittee meeting. He briefly reviewed all CALFED actions in the Delta, all projects that are being considered, and cumulative effects of water quality/supply actions.

Commissioner Van Loben Sels asked what the impacts will be on the economy of the Delta and on the tax base on those properties that are shifting from bonafide farming operations to non-farming interests. He noted in many cases the new property owners

will not have to pay RD taxes, North, Central, or South Delta Water Agency taxes, nor county property taxes. Mr. Majors agreed that needs to be evaluated and assured the Commissioners that CALFED will honor the commitments regarding limits on conversion and that analyses will be undertaken in subsequent environmental documents.

Commissioner Shaffer stated that there are ROD commitments regarding mitigation that were not included in the document. Mr. Majors agreed that they should be included.

Bruce Herbold, EPA, conducted a slide show briefing on the preliminary findings of the Delta Cross Channel Research Project. He said scientists think the two gates closed against the waters of the Sacramento River may have more to do with salmon survival and water quality than anything else in the North Delta. The scientists conducted research on the junction of the Delta Cross Channel and the Sacramento River in September 2000 for a period of about ten weeks. They tracked 120,000 outgoing salmon smolts with paint marks, radio tags, acoustic echoes and nets; they clocked water qualities, quantities and velocities, noting how things changed as river flows encountered strong tides moving in and out; and they even shadowed 100 adult salmon swimming up toward the cross channel from the San Joaquin River, to see if the operation of the gates somehow changed their course. Mr. Herbold said this preliminary research is shaping research to be carried out over the next two or three years.

Commissioner Brean asked about information on the water column; Mr. Herbold said the fish were below the top two meters.

Commissioner Sanders asked the fate of the 38% of fish that were not found; Mr. Herbold said they could have died; been harvested, or been diverted to a different waterway.

Commissioner Curtis said they will need to study the survival rate more thoroughly.

## **9. Briefing on Proposed Old River Parkway.**

Mary Walker, Old River Parkway Committee, briefed the Commission on the purpose and status of the nonprofit group's planning efforts to create a linear park between Wickland and Sugar Cuts, San Joaquin County (east of the proposed new town of Mountain House and north of City of Tracy). The Parkway would be mostly in the Secondary Zone, and would include waterways and some small land areas in the Primary Zone. She encouraged participation and announced her web site, [www.olderiverpark.org](http://www.olderiverpark.org).

Chairman McCarty asked for public comments.

Jerry Robinson, South Delta Water Agency, asked if the Parkway Committee plans to hold hearings on the proposed park; Ms Walker said 'yes', hearings would be held as part of the environmental review process.

## **10. Recreation Citizens Advisory Committee.**

Chairman McCarty asked for consideration and possible agreement to reconstitute the Recreation Citizens Advisory Committee to assist in the preparation of the Scoping document for the Delta Master Recreation Plan.

Ms Aramburu informed the Commissioners that they received a memo in the mailing packet that recommends the Commission revamp and reappoint a Recreation Citizens Advisory Committee to work with the Ad Hoc Recreation Group, which has been meeting for the last two years to discuss CALFED recreation issues. In addition to new representatives for the agencies represented on the Commission, and the interested parties that have been participating, she suggested that the Commission invite participation by the other CALFED agencies. As always, in the effort to be inclusive, new participants and interested parties are always welcome. This group would be convened to review the Scoping document of the proposed CALFED-funded Delta Recreation Master Plan, and would continue to provide oversight and guidance when the Master Plan preparation begins.

Commissioner Shaffer suggested appointment of some agricultural representatives.

On a motion by Commissioner Calone, and a second by Commissioner Coglianese, the reconstitution of the Recreation Citizen Advisory Committee was approved by unanimous voice vote.

## **11. Update on Agriculture in the Primary Zone.**

Ms Aramburu said the Commission is now permanent and recommended revisiting the agriculture findings, policies, and recommendations in the Plan. She said the staff report summarized land use and agricultural changes in the Delta counties. She said the Commission could look at a variety of strategies to ensure that there is conversion of land to wildlife habitat, they're good neighbors, such as: buffers, (i.e. pilot projects buffers of different sizes); protecting key agriculture lands by working with local governments, landowners, and local land trusts; and identifying the key land that should be protected with unique characteristics or a host of other topics and issues.

She noted that the Resource Conservation and Development Program (RC&D) is another issue before the Commission. The Program focuses on the economic and cultural aspects of resource management in rural communities and suited very well to the type of situation in the Delta. The San Joaquin Resource Conservation District is supportive of a Delta-wide RC&D. It is a federal program and if approved for the Delta, the Commission would be the board for the RC&D and could add other persons if it was felt necessary.

The benefit is that it is a federally funded program and would provide two staff persons to help carry out the RC&D Program, working under the direction of the DPC. The RC&D concept allows for interesting opportunities for carrying out DPC's mission, including technical assistance for applying for grants, holding easements, and owning property. Ms Aramburu noted that although there is currently no recommendation, the Commission might want a subcommittee to look into it.

Chairman McCarty observed there have been many changes in the last eight years since the Commission first discussed findings and policies on the Delta and agriculture issues. He moved to establish an agriculture subcommittee or reconstitute the former advisory committee and look at several issues along with the RC&D.

Commissioner Sanders suggested a two phase approach starting with a subcommittee that would come back to the Commission with recommendations as to how the Commission might deal with this issue. If that subcommittee finds that an advisory committee is warranted, that might be a recommendation to the full Commission.

Chairman McCarty directed staff to contact all commissioners to see who would be interested and then bring back a formal action on an agriculture subcommittee at the next meeting and then start Phase I. He also suggested DPC contact the Farm Bureaus of all five counties that are involved as well as Agriculture Commissioners re: statements and/or ideas.

## **12. Adopt Budget and Work Plan for Fiscal Year 01-02.**

Ms Aramburu advised that the Commission needs to adopt a budget and work plan for FY 01-02. She said that she met with the Budget and Finance Subcommittee and discussed the proposed agenda and work plan. The Subcommittee suggested a few changes and the proposed budget and work plan now before the Commission. The Budget is from two special funds, and continues the Commission funding at approximately the same level as last year. The Budget includes contracts with: 1) State Lands Commission for administration and finance services; 2) Teale Data Center for maintenance of the Commission's website; and 3) Department of Conservation for Geographic Information Services. Department of Conservation has been working with DPC, at no cost, generated maps and charts for DPC and based on their experience, feel that the cost on the contract should be increased from \$16,000 to \$20,000 and have determined that an 11% overhead must be included. DPC has been working with Teale to make the information available on the internet.

The Work Plan also continues work underway, and reflects recommendations in the Commission's adopted strategic plan. The staff proposes to return to the Commissioners throughout the next year with updates on the main topics addressed in the Commission's planning program: agriculture, recreation, wildlife habitat, and levees. Many of these topics overlap CALFED programs so staff will be working on its own planning program, and participating and reviewing CALFED programs and projects. As always, staff will

continue to review proposed projects and to monitor proposed changes in land use and update the Commission and the public on these proposals.

Ms Aramburu said she has coordinated with the Budget and Finance Subcommittee and is submitting a request for one additional staff position to assist with the CALFED-associated work, which will be considered for FY 02-03.

Bill Curry questioned the Budget report's \$29,000 reduction for Harbors and Watercraft Revolving Fund. Margit explained that is Pro Rata -- DPC gets money from special funds rather than the General Fund and is charged an administration fee.

Chairman McCarty asked for public comments.

Becky Sheehan, State Farm Bureau, offered to provide assistance on agricultural issues.

On a motion by Commissioner Calone and a second by Commissioner Shaffer, the work plan and budget for FY 01-02 was approved unanimously by voice vote..

## **12. Adjourn.**

The meeting was adjourned at 8:35 p.m.